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2005 MAY -2 P 3:09

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
Regular Session, 2005

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**ENROLLED**

SENATE BILL NO. 513

(By Senator McCABE, ET AL)

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PASSED APRIL 16, 2005

In Effect FEB 24 Passage

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## Senate Bill No. 513

(BY SENATORS MCCABE, PLYMALE, JENKINS, FOSTER,  
SPOUSE, HARRISON, SHARPE, DEMPSEY, BARNES AND UNGER)

[Passed April 16, 2005; in effect from passage.]

AN ACT to amend and reenact §5E-1-8 of the Code of West Virginia, 1931, as amended, relating to the Capital Company Act; eliminating the total tax credits available under the Capital Company Act during the fiscal year beginning on the first day of July, two thousand five; and modifying the time period in which the authority may allocate tax credits available under the Capital Company Act during the fiscal year beginning on the first day of July, two thousand four.

*Be it enacted by the Legislature of West Virginia:*

That §5E-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.**

#### **§5E-1-8. Tax credits.**

- 1 (a) The total amount of tax credits authorized for a
- 2 single qualified company may not exceed two million
- 3 dollars. The total amount of tax credits authorized for a
- 4 single economic development and technology advancement

5 center may not exceed one million dollars. Capitalization  
6 of the company or center may be increased pursuant to  
7 rule of the authority.

8 (b)(1) The total credits authorized by the authority for all  
9 companies and centers may not exceed a total of ten  
10 million dollars each fiscal year: *Provided*, That for the  
11 fiscal year beginning on the first day of July, one thousand  
12 nine hundred ninety-nine, the total credits authorized for  
13 all companies may not exceed a total of six million dollars:  
14 *Provided, however*, That for the fiscal year beginning on  
15 the first day of July, two thousand, the total credits  
16 authorized for all companies may not exceed a total of  
17 four million dollars: *Provided further*, That for the fiscal  
18 year beginning on the first day of July, two thousand one,  
19 the total credits authorized for all companies may not  
20 exceed a total of four million dollars: *And provided*  
21 *further*, That for the fiscal year beginning on the first day  
22 of July, two thousand two, the total credits authorized for  
23 all companies may not exceed a total of three million  
24 dollars: *And provided further*, That for the fiscal year  
25 beginning on the first day of July, two thousand three, the  
26 total credits authorized for all companies may not exceed  
27 a total of three million dollars: *And provided further*, That  
28 for the fiscal year beginning on the first day of July, two  
29 thousand four, the total credits authorized for all compa-  
30 nies may not exceed a total of one million dollars: *And*  
31 *provided further*, That for the fiscal year beginning on the  
32 first day of July, two thousand five, there shall be no  
33 credits authorized: *And provided further*, That the capital  
34 base of any qualified company other than an economic  
35 development and technology advancement center qualified  
36 under the provisions of article twelve-a, chapter eighteen-  
37 b of this code shall be invested in accordance with the  
38 provisions of this article. The authority shall allocate  
39 these credits to qualified companies and centers in the  
40 order that the companies are qualified.

41 (2) Not more than two million dollars of the credits  
42 allowed under subdivision (1) of this subsection may be  
43 allocated by the authority during each fiscal year to one or  
44 more small business investment companies described in  
45 this subdivision: *Provided*, That for the fiscal year begin-  
46 ning on the first day of July, two thousand four, and for  
47 the fiscal year beginning on the first day of July, two  
48 thousand five, no credits authorized by this section may be  
49 allocated by the authority to one or more small business  
50 investment companies. After a portion of the credits are  
51 allocated to small business investment companies as  
52 provided in this section, not more than one million dollars  
53 of the credits allowed under subdivision (1) of this subsec-  
54 tion may be allocated by the authority during each fiscal  
55 year to one or more economic development and technology  
56 advancement centers qualified by the authority under  
57 article twelve-a, chapter eighteen-b of this code: *Pro-*  
58 *vided, however*, That for the fiscal year beginning on the  
59 first day of July, two thousand four, all of the credits  
60 allowed under subdivision (1) of this subsection shall be  
61 allocated only to one or more qualified economic develop-  
62 ment and technology advancement centers: *Provided*  
63 *further*, That for the fiscal year beginning on the first day  
64 of July, two thousand five, no credits allowed under  
65 subdivision (1) of this subsection shall be allocated to any  
66 qualified economic development and technology advance-  
67 ment center. The remainder of the tax credits allowed  
68 during the fiscal year shall be allocated by the authority  
69 under the provisions of section four, article two of this  
70 chapter: *And provided further*, That for the fiscal year  
71 beginning on the first day of July, two thousand four, and  
72 for the fiscal year beginning on the first day of July, two  
73 thousand five, no credits authorized by this section may be  
74 allocated by the authority to a taxpayer pursuant to the  
75 provisions of section four, article two of this chapter. The  
76 portion of the tax credits allowed for small business  
77 investment companies described in this subdivision shall  
78 be allowed only if allocated by the authority during the

79 first ninety days of the fiscal year and may only be allo-  
80 cated to companies that: (A) Were organized on or after the  
81 first day of January, one thousand nine hundred ninety-  
82 nine; (B) are licensed by the small business administration  
83 as a small business investment company under the small  
84 business investment act; and (C) have certified in writing  
85 to the authority on the application for credits under this  
86 act that the company will diligently seek to obtain and  
87 thereafter diligently seek to invest leverage available to  
88 the small business investment companies under the small  
89 business investment act. These credits shall be allocated  
90 by the authority in the order that the companies are  
91 qualified. The portion of the tax credits allowed for  
92 economic development and technology advancement  
93 centers described in article twelve-a, chapter eighteen-b of  
94 this code shall be similarly allowed only if allocated by the  
95 authority during the first ninety days of the fiscal year:  
96 *And provided further*, That solely for the fiscal year  
97 beginning on the first day of July, two thousand four, the  
98 authority may allocate the tax credits allowed for eco-  
99 nomic development and technology advancement centers  
100 at any time during the fiscal year. Any credits which have  
101 not been allocated to qualified companies meeting the  
102 requirements of this subdivision relating to small business  
103 investment companies or to qualified economic develop-  
104 ment and technology advancement centers during the first  
105 ninety days of the fiscal year shall be made available and  
106 allocated by the authority under the provisions of section  
107 four, article two of this chapter: *And provided further*,  
108 That for the fiscal year beginning on the first day of July,  
109 two thousand four, and for the fiscal year beginning on the  
110 first day of July, two thousand five, no credits authorized  
111 by this section may be allocated by the authority to a  
112 taxpayer pursuant to the provisions of section four, article  
113 two of this chapter.

114 (3) Notwithstanding any provision of this code or  
115 legislative rule promulgated thereunder to the contrary,  
116 for the fiscal year beginning on the first day of July, two

117 thousand four, and for the fiscal year beginning on the  
118 first day of July, two thousand five, the authority has the  
119 sole discretion to allocate or refuse to allocate tax credits  
120 authorized under this section to any qualified economic  
121 development and technology advancement center upon its  
122 determination of the extent to which the center will fulfill  
123 the purposes of this article. The determination shall be  
124 based upon the application of the center, the extent to  
125 which the company or center fulfilled those purposes in  
126 prior years after receiving tax credits authorized under  
127 this section, the extent to which the center is expected to  
128 stimulate economic development and high technology  
129 research in the chemical industry and such other similarly  
130 related criteria as the authority may establish by vote of  
131 the majority of authority.

132 (c) Any investor, including an individual, partnership,  
133 limited liability company, corporation or other entity who  
134 makes a capital investment in a qualified West Virginia  
135 capital company, is entitled to a tax credit equal to fifty  
136 percent of the investment, except as otherwise provided in  
137 this section or in this article: *Provided*, That the tax credit  
138 available to investors who make a capital investment in an  
139 economic development and technology advancement  
140 center shall be one hundred percent of the investment. The  
141 credit allowed by this article shall be taken after all other  
142 credits allowed by chapter eleven of this code. It shall be  
143 taken against the same taxes and in the same order as set  
144 forth in subsections (c) through (i), inclusive, section five,  
145 article thirteen-c, chapter eleven of this code. The credit  
146 for investments by a partnership, limited liability com-  
147 pany, a corporation electing to be treated as a subchapter  
148 S corporation or any other entity which is treated as a pass  
149 through entity under federal and state income tax laws  
150 may be divided pursuant to election of the entity's part-  
151 ners, members, shareholders or owners.

152 (d) The tax credit allowed under this section is to be  
153 credited against the taxpayer's tax liability for the taxable

154 year in which the investment in a qualified West Virginia  
155 capital company or economic development and technology  
156 advancement center is made. If the amount of the tax  
157 credit exceeds the taxpayer's tax liability for the taxable  
158 year, the amount of the credit which exceeds the tax  
159 liability for the taxable year may be carried to succeeding  
160 taxable years until used in full or until forfeited: *Pro-*  
161 *vided*, That: (i) Tax credits may not be carried forward  
162 beyond fifteen years; and (ii) tax credits may not be  
163 carried back to prior taxable years. Any tax credit  
164 remaining after the fifteenth taxable year is forfeited.

165 (e) The tax credit provided in this section is available  
166 only to those taxpayers whose investment in a qualified  
167 West Virginia capital company or economic development  
168 and technology advancement center occurs after the first  
169 day of July, one thousand nine hundred eighty-six.

170 (f) The tax credit allowed under this section may not be  
171 used against any liability the taxpayer may have for  
172 interest, penalties or additions to tax.

173 (g) Notwithstanding any provision in this code to the  
174 contrary, the Tax Commissioner shall publish in the State  
175 Register the name and address of every taxpayer and the  
176 amount, by category, of any credit asserted under this  
177 article. The categories by dollar amount of credit received  
178 are as follows:

179 (1) More than \$1.00, but not more than \$50,000;

180 (2) More than \$50,000, but not more than \$100,000;

181 (3) More than \$100,000, but not more than \$250,000;

182 (4) More than \$250,000, but not more than \$500,000;

183 (5) More than \$500,000, but not more than \$1,000,000;

184 and

185 (6) More than \$1,000,000.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Chas. White*  
.....  
Chairman Senate Committee

*H. Rich Burr*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*Darrell E. Schmidt*  
.....  
Clerk of the Senate

*Gregg Z. Sox*  
.....  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
.....  
President of the Senate

*[Signature]*  
.....  
Speaker House of Delegates

The within *is appended* this the *2nd*  
Day of *May*, 2005.

*[Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 27 2005

Time 10:25 am